

Union Calendar No. 120

112TH CONGRESS
1ST SESSION

H. R. 2056

[Report No. 112–182]

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 31, 2011

Mr. WESTMORELAND (for himself, Mr. DAVID SCOTT of Georgia, Mr. BROWN of Georgia, Mr. GARY G. MILLER of California, Mr. POSEY, Mr. MARCHANT, and Mr. MACK) introduced the following bill; which was referred to the Committee on Financial Services

JULY 26, 2011

Additional sponsors: Mr. GRIMM, Mrs. MALONEY, Mr. HINOJOSA, Mr. SCHWEIKERT, Mr. MANZULLO, Mr. MCINTYRE, and Ms. HAYWORTH

JULY 26, 2011

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 31, 2011]

A BILL

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INSPECTOR GENERAL STUDY.**

4 (a) *STUDY.*—*The Inspector General of the Federal De-*
 5 *posit Insurance Corporation (FDIC) shall conduct a com-*
 6 *prehensive study on the impact of the failure of insured de-*
 7 *pository institutions.*

8 (b) *DEFINITIONS.*—*For purposes of this Act—*

9 (1) *the term “insured depository institution” has*
 10 *the meaning given such term in section 3(c) of the*
 11 *Federal Deposit Insurance Act (12 U.S.C. 1813(c));*

12 (2) *the term “private equity company” has the*
 13 *meaning given the terms “hedge fund” and “private*
 14 *equity fund” in section 13(h)(2) of the Bank Holding*
 15 *Company Act of 1956 (12 U.S.C. 1851(h)(2)); and*

16 (3) *the term “paper-loss” means any write down*
 17 *on a performing asset held by an insured depository*
 18 *institution that causes such institution to raise more*
 19 *capital in order to cover the write down.*

20 (c) *MATTERS TO BE STUDIED.*—*In conducting the*
 21 *study under this section, the Inspector General shall address*
 22 *the following:*

23 (1) *LOSS-SHARING AGREEMENTS.*—*The effect of*
 24 *loss-sharing agreements (LSAs), including—*

1 (A) *the impact of loss-sharing on the in-*
2 *insured depository institutions that survive and*
3 *the borrowers of insured depository institutions*
4 *that fail, including—*

5 (i) *the impact on the rate of loan*
6 *modifications and adjustments;*

7 (ii) *whether more types of loans (such*
8 *as commercial (including land development*
9 *and 1- to 4-family residential and commer-*
10 *cial construction loans), residential, or*
11 *small business loans) could be modified with*
12 *fewer LSAs, or if LSAs could be phased out*
13 *altogether;*

14 (iii) *the FDIC's policies and proce-*
15 *dures for monitoring LSAs, including those*
16 *designed to ensure institutions are not im-*
17 *prudently selling assets at a depressed*
18 *value;*

19 (iv) *the impact on the availability of*
20 *credit; and*

21 (v) *the impact on loans with partici-*
22 *pation agreements outstanding with other*
23 *insured depository institutions;*

24 (B) *the FDIC's policies and procedures for*
25 *terminating LSAs and mitigating the risk of ac-*

1 *quiring institutions having substantial assets re-*
2 *maining in their portfolio when the LSAs are*
3 *due to expire;*

4 *(C) the extent to which LSAs provide incen-*
5 *tives for loan modifications and other means of*
6 *increasing the probability of commercial assets*
7 *being considered “performing”;*

8 *(D) the nature and extent of differences for*
9 *modifying residential assets and working out*
10 *commercial real estate under LSAs; and*

11 *(E) methods of ensuring the orderly end of*
12 *expiring LSAs to prevent any adverse impact on*
13 *borrowing, real estate industry and the Deposi-*
14 *tors Insurance Fund.*

15 *(2) PAPER LOSSES.—The significance of paper*
16 *losses, including—*

17 *(A) the number of insured depository insti-*
18 *tutions that have been placed into receivership or*
19 *conservatorship due to paper losses;*

20 *(B) the impact on paper losses of raising*
21 *more capital;*

22 *(C) the effect of changes in the application*
23 *of the fair value of real estate accounting rules*
24 *and other accounting standards;*

1 (D) whether field examiners are using prop-
2 er appraisal procedures with respect to paper
3 losses; and

4 (E) methods of stopping the vicious down-
5 ward spiral of losses and write downs.

6 (3) APPRAISALS.—

7 (A) The number of insured depository insti-
8 tutions placed into receivership or conservator-
9 ship due to asset write-downs and the policies
10 and procedures for evaluating the adequacy of an
11 insured depository institution's allowance for
12 loan and lease losses.

13 (B) The policies and procedures examiners
14 use for evaluating the appraised values of prop-
15 erty securing real estate loans and the extent to
16 which those policies and procedures are followed.

17 (C) FDIC field examiner implementation of
18 guidance issued December 2, 2010, titled “Agen-
19 cies Issue Final Appraisal and Evaluation
20 Guidelines”.

21 (4) CAPITAL.—

22 (A) The factors that examiners use to assess
23 the adequacy of capital at insured depository in-
24 stitutions, including the extent to which the
25 quality and risk profile of the insured institu-

tion’s loan portfolio is considered in the examiners’ assessment.

(B) The number of applications received by the FDIC from private capital investors to acquire insured depository institutions in receivership, the factors used by the FDIC in evaluating the applications, and the number of applications that have been approved or not approved, including the reasons pertaining thereto.

(C) The policies and procedures associated with the evaluation of potential private investments in insured depository institutions and the extent to which those policies and procedures are followed.

(5) WORKOUTS.—The success of FDIC field examiners in implementing FDIC guidelines titled “Policy Statement on Prudent Commercial Real Estate Loan Workouts” (October 31, 2009) regarding workouts of commercial real estate, including—

(A) whether field examiners are using the correct appraisals; and

(B) whether there is any difference in implementation between residential workouts and commercial (including land development and 1-

1 to 4-family residential and commercial construc-
2 tion loans) workouts.

3 (6) *ORDERS.*—*The application and impact of*
4 *consent orders and cease and desist orders, includ-*
5 *ing—*

6 (A) *whether such orders have been applied*
7 *uniformly and fairly across all insured deposi-*
8 *tory institutions;*

9 (B) *the reasons for failing to apply such or-*
10 *ders uniformly and fairly when such failure oc-*
11 *curs;*

12 (C) *the impact of such orders on the ability*
13 *of insured depository institutions to raise cap-*
14 *ital;*

15 (D) *the impact of such orders on the ability*
16 *of insured depository institutions to extend or*
17 *modify credit to existing and new borrowers; and*

18 (E) *whether individual insured depository*
19 *institutions have improved enough to have such*
20 *orders removed.*

21 (7) *FDIC POLICY.*—*The application and impact*
22 *of FDIC policies, including—*

23 (A) *the impact of FDIC policies on the in-*
24 *vestment in insured depository institutions, espe-*

1 cially in States where more than 10 such institu-
2 tions have failed since 2008;

3 (B) whether the FDIC fairly and consist-
4 ently applies capital standards when an insured
5 depository institution is successful in raising
6 private capital; and

7 (C) whether the FDIC steers potential inves-
8 tors away from insured depository institutions
9 that may be in danger of being placed in receiv-
10 ership or conservatorship.

11 (8) *PRIVATE EQUITY COMPANIES.*—The FDIC’s
12 handling of potential investment from private equity
13 companies in insured depository institutions, includ-
14 ing—

15 (A) the number of insured depository insti-
16 tutions that have been approved to receive pri-
17 vate equity investment by the FDIC;

18 (B) the number of insured depository insti-
19 tutions that have been rejected from receiving
20 private equity investment by the FDIC; and

21 (C) the reasons for rejection of private eq-
22 uity investment when such rejection occurs.

23 (d) *REPORT.*—Not later than one year after the date
24 of the enactment of this Act, the Inspector General shall sub-
25 mit to Congress a report—

1 (1) *on the results of the study conducted pursu-*
 2 *ant to this section; and*

3 (2) *any recommendations based on such study.*

4 (e) *COORDINATION BETWEEN FDIC IG, TREASURY IG,*
 5 *AND FEDERAL RESERVE IG.—In carrying out this section,*
 6 *the Inspector General of the FDIC shall consult with the*
 7 *Inspectors General of the Treasury and of the Federal Re-*
 8 *serve System, and such Inspectors General shall provide*
 9 *any documents or other material requested by the Inspector*
 10 *General of the FDIC in order to carry out this section.*

11 **SEC. 2. FUNDING.**

12 *The FDIC shall make available from the portion of the*
 13 *FDIC budget allocated to management expenses, sums al-*
 14 *lowing the FDIC Inspector General to complete this study.*

15 **SEC. 3. GAO STUDY.**

16 (a) *STUDY.—The Comptroller General of the United*
 17 *States shall carry out a study on the following:*

18 (1) *The causes of high levels of bank failures in*
 19 *states with 10 or more failures since 2008.*

20 (2) *The procyclical impact of fair value account-*
 21 *ing standards.*

22 (3) *The causes and potential solutions for the*
 23 *“vicious cycle” of loan write downs, raising capital,*
 24 *and failures.*

1 (4) *An analysis of the community impact of*
2 *bank failures.*

3 (5) *The feasibility and overall impact of loss*
4 *share agreements.*

5 (b) *REPORT.—Not later than the end of the 1-year pe-*
6 *riod beginning on the date of the enactment of this Act,*
7 *the Comptroller General shall issue a report to the Congress*
8 *on the study carried out pursuant to subsection (a).*

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